

SENATE MOTION

MR. PRESIDENT:

I move that Senate Bill 478 be amended to read as follows:

- 1 Page 4, line 9, delete "involving real property located in Indiana that
2 is" and insert **"other than an open end credit plan or a reverse
3 mortgage in which:**
4 **(1) the borrower is a natural person;**
5 **(2) the debt is incurred by the obligor primarily for personal,**
6 **family, or household purposes;**
7 **(3) the loan is secured by a mortgage on residential real**
8 **property or by collateral that has a mortgage lien interest in**
9 **residential real property, and the residential real property is**
10 **or will be occupied by the obligor as the obligor's principal**
11 **dwelling; and**
12 **(4) the terms of the loan provide:**
13 **(A) that the loan transaction, including a residential**
14 **mortgage transaction (as defined in 12 CFR 226.2(a)(24),**
15 **as amended from time to time) at the time the loan is**
16 **consummated is considered a mortgage under section 152**
17 **of the Home Ownership and Equity Protection Act of 1994,**
18 **Pub. L. No. 103-325, 15 U.S.C. 602(aa), as amended from**
19 **time to time, and regulations adopted by the Federal**
20 **Reserve Board, including 12 CFR 226.32, as amended from**
21 **time to time; or**
22 **(B) for total points and fees payable by the borrower at or**
23 **before the loan closing, exceed six percent (6%) of the total**
24 **loan amount."**
25 Page 4, delete lines 10 through 14.
26 Page 4, between lines 37 and 38, begin a new paragraph and insert:
27 **"(I) "Total points and fees payable by the borrower at or before**
28 **the loan closing" means points and fees (as defined in 12 CFR**
29 **226.32(b)(1), as amended from time to time)."**
30 Page 5, line 40, delete "A lender is considered to have complied
31 with this" and insert **"The terms of the offer must be in writing and**

1 **initialed by the borrower. The offer must be clearly labeled in large**
 2 **bold type and must include the following disclosure:".**

3 Page 5, delete lines 41 through 42.

4 Page 6, delete line 6.

5 Page 8, line 12, delete "refinance the same obligor into another" and
 6 insert ", **within two (2) years after having made a covered loan,**
 7 **charge an obligor points or fees in connection with the covered**
 8 **loan if the proceeds of the covered loan are used to refinance an**
 9 **existing covered loan for which points and fees were charged.**
 10 **However, points and fees may be charged on any proceeds of a**
 11 **covered loan that are in excess of the amount refinanced on the**
 12 **existing covered loan."**

13 Page 8, delete lines 13 through 21.

14 Page 9, line 41, delete "two (2) years of the occurrence of the" and
 15 insert "**five (5) years after the making of the covered loan."**

16 Page 9, delete line 42.

17 Page 10, line 9, delete "violations of this article" and insert "**fraud**".

18 Page 10, line 14, delete "violations of this article" and insert
 19 "**fraud**".

20 Page 10, line 18, delete "violations of this article" and insert
 21 "**fraud**".

22 Page 10, line 23, delete "violations of" and insert "**fraud**".

23 Page 10, line 24, delete "this article".

24 Page 11, line 4, delete "violations" and insert "**fraud**".

25 Page 11, line 5, delete "of this article".

26 Page 12, between lines 17 and 18, begin a new paragraph and insert:

27 "**Sec. 8. (a) If a person suffers a pecuniary loss as a result of a**
 28 **violation of this article, the person may bring a civil action for the**
 29 **following:**

30 (1) **Actual damages.**

31 (2) **The costs of the action.**

32 (3) **A reasonable attorney's fee.**

33 (b) **An action under this section may not be brought,**
 34 **commenced, or maintained unless the action is filed within five (5)**
 35 **years after the date the person knew or by the exercise of**
 36 **reasonable diligence should have known of the violation of this**
 37 **article.**

- 1 **(c) An award of actual damages under subsection (a)(1) has**
2 **priority over a civil penalty imposed under this chapter."**
 (Reference is to SB 478 as printed February 21, 2003.)

Senator CLARK